

REMARKS

A Final Rejection was mailed in the case on June 7, 2011, making a response due on or before September 7, 2011. This Response is being submitted, along with a Petition For Extension of Time Within the Second Month and the required fee. This response also accompanies a Request For Continued Examination and the required fee. No additional fee is thought to be due at this time. If any additional fee is due for the continued prosecution of this application, please charge the same to Applicant's Deposit Account No. 50-2555 (Whitaker, Chalk, Swindle & Sawyer, LLP).

Claims 7-11 and 13-21 are pending in the case. Method Claim 7 had been withdrawn from prosecution pursuant to a Restriction Requirement. In the initial Office Action mailed in the case on October 3, 2008, the Examiner required restriction between the process Claim 7 and the product Claims 1-6. Applicant elected to prosecute Claims 1-6 directed to the calco-magnesian aqueous suspension. Accordingly, Claim 7 was withdrawn. In the Response filed on October 19, 2010, Applicant canceled original Claims 1-6 and submitted new Claims 8-21 also directed to the calco-magnesian aqueous suspension product. However, the earlier Office Action also noted that, if Claim 7 was amended during prosecution to be commensurate in scope to an allowed product claim, that the withdrawn process claim would be rejoined. Applicant has accordingly amended withdrawn Claim 7 to include all of the features of product Claim 8. Rejoinder of process Claim 7 is requested based upon Applicant's belief that product Claim 8 will be found allowable.

In the Final Rejection mailed on June 7, 2011, the Examiner continues to reject pending Claims 8-11 and 13-21 under 35 U.S.C. §103 as being unpatentable over the reference to Langelin (DE 4302539). Reconsideration of the rejection is respectfully requested in view of the evidence presented and the arguments which follow.

Response to the Examiner's Argument:

In the latest Office Action, the Examiner continues to reject Applicant's Claims 8-11 and 13-21 based upon the previously cited Langelin reference (DE 4302539). The Examiner apparently finds Applicant's previous arguments with respect to Langelin to be unpersuasive because no comparative data has been provided according to the express teachings of Langelin. The Examiner states on page 4 of the current Office Action that:

"Applicant again referred to the Declaration filed 04/29/10 to show that the suspension of Langelin does not have the claimed properties. However, such Declaration was filed in response to the Huege reference, and the rejections based on Huege et al. had been withdrawn accordingly. Since no comparison data for Langelin has been provided, applicant's argument is not found convincing."

The Examiner further argues on page 4 that:

"Since applicant has not provided any factual evidence to show that the claimed surface area or viscosity would have in fact result[ed] in unexpected properties of the suspension, applicant's argument is not found convincing."

Finally, on page 6 of the current Office Action, the Examiner argues that:

"Since applicant has not provided any factual evidence to show that optimizing the surface area or particle size in Langelin would lead to a viscosity beyond the claimed range, or the claimed surface area or viscosity would have in fact result[ed] in unexpected properties of the suspension, applicant's argument is not found convincing."

In order to address these points raised by the Examiner, Applicant is including as Attachment 1 to this Response a newly prepared Declaration of Mr. Marc Pelletier, an expert in this area of technology. The Declaration includes new assays by way of comparison to the teachings of the Langelin reference and makes clear that the teaching of Langelin cannot be taken to render "obvious" the presently claimed invention.

With respect to the argument made by the Examiner as to the teaching of Langelin, the Examiner refers to one embodiment which is mentioned on page 3 of the translation of Langelin (~page6, lines 52 to 55 of the German text). However, it is clear from reading the text that this described embodiment of the Langelin invention refers to the granulates themselves, not to a slurry. These granulates, particularly the portion thereof which has a size higher than 200 μm , may show a BET specific area of 9 m^2/g and are used as filter beds.

However, it results from the attached Declaration of Mr. Pelletier, and particularly from milks of lime #1 to #4 shown in the Declaration, that, from the teaching of Langelin, it is absolutely not possible to simultaneously optimize the particle size distribution AND the BET specific surface area of Langelin in order to give a reactive milk of lime of low viscosity.

The milks of lime #5 and #6 shown in the Declaration make clear that the embodiment of Langelin cited by the Examiner with reference to page 3 of the translation of Langelin must concern a selection of granulates having a great size, preferably higher than 200 μm , if a low BET specific surface area of 9 m^2/g must be obtained. Without such a selection, the BET specific surface area is widely higher: 14 m^2/g .

Moreover with such selected granulates of high size, it is not possible to make a milk (see the Declaration of Mr Pelletier on this point). All of this probably explains their use as "filter beds." Note in this regard that the product in Langelin was called by the patentee a "sand of lime", rather than a milk of lime.

Consequently the teachings of the Langelin reference clearly do not arrive at Applicant's claimed calco-magnesian aqueous suspension wherein the particles have a d_{98} granulametric dimension of less than 20 microns and a viscosity less than or equal to 1.2 Pa.s. As such, Langelin does not render Applicant's claimed invention "obvious" under 35 U.S.C. §103(a).

Reconsideration of the rejection of Applicant's pending Claims 7-11 and 13-21 is respectfully requested.

Respectfully submitted,

Date: _____

Nov 17, 2011

C. D. Gunter, Jr.
Charles D. Gunter, Jr.
Reg. No. 29,386
Whitaker Chalk Swindle & Schwartz PLLC
301 Commerce St, Suite 3500
Fort Worth, Texas 76102
(817) 878-0504

ATTORNEY(S) FOR APPLICANT